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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 DOCKET NO. 1:13-MD-2419 (RWZ)
4 IN RE: NEW ENGLAND COMPOUNDING
5 PHARMACY, INC. PRODUCTS
6 LIABILITY LITIGATION

7 THIS DOCUMENT RELATES TO:

8 ARMETTA, ET AL. V. BOX HILL SURGERY CENTER,
9 LLC, ET AL.
10 NO. 1:14-CV-14022-RWZ

11 BOWMAN, ET AL. V. BOX HILL SURGERY CENTER,
12 LLC, ET AL.
13 NO. 1:14-CV-14028-RWZ

14 DAVIS, ET AL. V. BOX HILL SURGERY CENTER,
15 LLC, ET AL.
16 NO. 1:14-CV-14033-RWZ

17 DREISCH, ET AL. V. BOX HILL SURGERY CENTER,
18 LLC, ET AL.
19 NO. 1:14-CV-14029-RWZ

20 FARTHING, ET AL. V. BOX HILL SURGERY CENTER,
21 LLC, ET AL.
22 NO. 1:14-CV-14036-RWZ

23 KASHI, ET AL. V. BOX HILL SURGERY CENTER,
24 LLC, ET AL.
25 NO. 1:14-CV-14026-RWZ

26 TORBECK, ET AL. BOX HILL SURGERY CENTER,
27 LLC, ET AL.
28 NO. 1:14-CV-14023-RWZ

29 HANDY, ET AL. V. BOX HILL SURGERY CENTER,
30 LLC, ET AL.
31 NO. 1:14-CV-14019-RWZ

32 DEPONENT: LAXMAIAH MANCHIKANTI, M.D.
33 DATE: FEBRUARY 16, 2017
34 REPORTER: CHELSEA SEVILLA-LOZADA

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1 APPEARANCES (CONTINUED)	1 STIPULATION	
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3 ON BEHALF OF THE DEFENDANT, BOX HILL SURGERY CENTER:	3 The deposition of LAXMAIAH MANCHIKANTI, M.D. taken at	
4 GREGORY K. KIRBY	4 THE PAIN CENTER, 2831 LONE OAK ROAD, PADUCAH, KENTUCKY	
5 PESSION KATZ LAW, P.A.	5 42003 on THURSDAY, the 16TH day of FEBRUARY, 2017 at	
6 901 DULANEY VALLEY ROAD, SUITE 500	6 approximately 10:00 A.M. CST; said deposition was taken	
7 TOWSON, MARYLAND 21204	7 pursuant to the FEDERAL Rules of Civil Procedure. It is	
8 TELEPHONE NO.: (410) 938-8800	8 agreed that CHELSEA SEVILLA-LOZADA, being a Notary	
9 E-MAIL: GKIRBY@PKLAW.COM	9 Public and Court Reporter for the State of Kentucky, may	
10	10 swear the witness.	
11 ON BEHALF OF THE DEFENDANT, SPECIALTY SURGERY CENTER:	11	
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13 BREWE, KRAUSE, BROOKS & CHASTIN, PLLC	13	
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<p style="text-align: right;">Page 74</p> <p>1 Q And in that book, don't you indicate that it's 2 very important to put down the specific drug that's 3 being used by the doctor?</p> <p>4 A That's correct.</p> <p>5 Q So that if you're really not using Depo- 6 Medrol, but rather a compounded drug, shouldn't Dr. 7 Bhambhani have indicated that in her patient's charts, 8 rather than writing Depo-Medrol?</p> <p>9 MR. KIRBY: Objection. Go ahead.</p> <p>10 A Well, she's -- I'm saying specific drug is 11 that you are using lidocaine, you are using Depo- 12 Medrol. Those are the issues. You use 13 methylprednisolone. I'm not saying that you have to use 14 a generic name or a pharmacological name, or a brand 15 name, so that issue was not an issue at that time, and I 16 have routinely dictated that if I use a Depo-Medrol, 17 even though it was from NECC, or from another 18 compounding, I called it Depo-Medrol, only the difference 19 was that if I use a preservative free, I would say it is 20 preservative free.</p> <p>21 Q You issued a 24-page report at your last --</p> <p>22 A A 24-page report on what?</p> <p>23 Q Your expert report in this case.</p> <p>24 A Oh, in this case. Yes, sir. I do. I have 25 that right here.</p>	<p style="text-align: right;">Page 76</p> <p>1 A I'm not a very good typist. I'm extremely 2 poor, my technical skills are not very good in typing. 3 I'm a good physician, but not a typist. I have 4 transcriptionists, they type if I dictate. Here, we 5 prepared this document together with the discussions, so 6 I believe his office may have typed it.</p> <p>7 Q Okay. So this 28 pages was typed at Mr. 8 Kirby's office and sent to you, and then you signed it?</p> <p>9 MR. KIRBY: Objection to form. Again, it's 10 protected information. Privileged information.</p> <p>11 A No. As I said, we -- I reviewed the 12 documentation first, then we had a meeting. This was 13 about two hours or so. We discussed all these issues. 14 We went one by one, and he started writing down, I'm 15 very bad at shorthand either, so after that, then it was 16 typed and it came to me. I made corrections, and then 17 the final document was produced.</p> <p>18 Q Have you reviewed the reports of any other 19 pain management physicians in this case?</p> <p>20 A I have reviewed the report of Dr. Saberski, 21 Saberski or Saberski, whatever.</p> <p>22 MR. KIRBY: Saberski.</p> <p>23 A Saberski, no, I can't say it. Saberski. 24 Saberski.</p> <p>25 Q Box Hill, you read Dr. Main's (phonetic)</p>
<p style="text-align: right;">Page 75</p> <p>1 Q I've got 24 typed pages that they're first 2 person. It is my opinion, it is my belief. It is 3 written in the first person. Did you, or someone in 4 your office, sit down and type out these 24 pages?</p> <p>5 MR. KIRBY: Objection to form. It's privileged 6 protected information in Rule 26.</p> <p>7 MR. MILLER: You can answer.</p> <p>8 BY MR. MILLER:</p> <p>9 A Well, we had both of us, the attorney, Mr. 10 Kirby and I, discussed these issues. I reviewed the 11 documentation first, and then we discussed with this and 12 jointly we came up with this report.</p> <p>13 Q Oh, who typed it?</p> <p>14 MR. KIRBY: Objection to form. Drafting is not 15 discoverable.</p> <p>16 Q I didn't ask you who drafted it. I said who 17 typed it.</p> <p>18 MR. KIRBY: Yeah. Same objection. If you 19 recall.</p> <p>20 MR. MILLER: Why don't you suggest to him that 21 he not recall.</p> <p>22 BY MR. MILLER:</p> <p>23 Q In court, every question is if you can recall, 24 Doctor, if you can remember. Do you remember typing a 25 24-page report?</p>	<p style="text-align: right;">Page 77</p> <p>1 report?</p> <p>2 A No. Dr. Main, who is that? Is that in there?</p> <p>3 I don't recall.</p> <p>4 Q He was an expert also hired by Box Hill.</p> <p>5 A No. I have not reviewed any of their expert's 6 reports. I have only reviewed your expert's reports to 7 the best of my knowledge.</p> <p>8 Q But you are -- are you confident that all of 9 the information in here that says that it's my opinion, 10 that they are truly your opinions?</p> <p>11 A Yes, sir. I am.</p> <p>12 Q If you could go to page 4?</p> <p>13 A Yes.</p> <p>14 Q Section B, medication purchasing by the Box 15 Hill defendants.</p> <p>16 A Yes.</p> <p>17 Q Apparently, Dr. Main has a very -- medication 18 purchased by the Box Hill defendant, as well.</p> <p>19 A I didn't understand your prior comment. I'm 20 looking at page 4, Section B, medication purchasing by 21 the Box Hill defendants, and you made some other comment 22 after that. I didn't hear that.</p> <p>23 Q I said did Dr. Main, another expert in this 24 case, as a Section B with the same exact title, matter 25 of fact, almost the entire report is the same as yours,</p>

<p style="text-align: right;">Page 78</p> <p>1 but we'll get to that.</p> <p>2 MR. KIRBY: Move to strike. No question. Go</p> <p>3 ahead.</p> <p>4 A Oh, well --</p> <p>5 MR. KIRBY: There's no question. Just wait.</p> <p>6 A Next question.</p> <p>7 Q Go down to the second paragraph that begins</p> <p>8 "Box Hill ordered." Do you see that?</p> <p>9 A Yes.</p> <p>10 Q This is a prescription order form provided by</p> <p>11 NECC. Have you actually reviewed the actual</p> <p>12 prescription order forms that Dr. Bhamhani used in this</p> <p>13 case?</p> <p>14 A Yes. I have.</p> <p>15 Q And are you aware that she was sending names</p> <p>16 that were simply on a schedule that she had seen. Did</p> <p>17 you see that?</p> <p>18 MR. KIRBY: Objection to form. You can answer.</p> <p>19 A Yeah. I saw that she sent the schedules. I</p> <p>20 don't understand what the question is. I saw that she</p> <p>21 was sending the schedules, and some of them had the</p> <p>22 names, but sometimes she just sent the see attached, the</p> <p>23 schedule.</p> <p>24 Q Right. But the schedule she is sending is a</p> <p>25 schedule of patients that she has already treated, so</p>	<p style="text-align: right;">Page 80</p> <p>1 you talking about? States, federal, I don't know,</p> <p>2 what are you talking about?</p> <p>3 BY MR. MILLER:</p> <p>4 Q Well, I can give you a list of them. Are you</p> <p>5 familiar with the Maryland Law co-wire (phonetic) that</p> <p>6 requires single prescriptions for individual patients?</p> <p>7 A Yes. I have seen that, but that is meant for</p> <p>8 the pharmacist and it is -- it did not come from</p> <p>9 Maryland Board of Medical Licensure. Also, it is for</p> <p>10 controlled substances. You just stated controlled</p> <p>11 substances. So this is not a controlled substance.</p> <p>12 Q Well, under Massachusetts definition, all</p> <p>13 drugs are controlled substances, are they not?</p> <p>14 MR. KIRBY: Objection.</p> <p>15 A I'm not aware of that.</p> <p>16 Q Are you aware of the Massachusetts statute</p> <p>17 that requires single prescription -- individual</p> <p>18 prescription for individual patients?</p> <p>19 MR. KIRBY: Objection to form.</p> <p>20 A Again, I have seen that several places in this</p> <p>21 documentation when I was going through, but these are</p> <p>22 all pharmacy directions. None of them is related from</p> <p>23 the Board of Medical Licensure. It is not controlling</p> <p>24 the practice of medicine. If that is the case, many of</p> <p>25 the doctors are not using that regulation as you call</p>
<p style="text-align: right;">Page 79</p> <p>1 you would treat 12 patients on October 12th, October the</p> <p>2 13th, she filled out a prescription order form and</p> <p>3 attaches that sheet, which is merely a list of names of</p> <p>4 patients she saw the previous day.</p> <p>5 MR. KIRBY: Objection to form. Is there a</p> <p>6 question?</p> <p>7 MR. MILLER: I'm getting to it.</p> <p>8 MR. KIRBY: Okay.</p> <p>9 BY MR. MILLER:</p> <p>10 Q Is it your opinion that that's appropriate?</p> <p>11 A Well, if she is going to use the -- if she's</p> <p>12 going to inject the steroids in the same patients again,</p> <p>13 Yes. It is appropriate.</p> <p>14 Q Okay. If she's not, then it would not be</p> <p>15 appropriate, correct?</p> <p>16 MR. KIRBY: Objection to form.</p> <p>17 A At least she was under the belief that they</p> <p>18 were coming back for the injections, that's why they</p> <p>19 were on the list, and that is the reason she provided</p> <p>20 the list. That is my interpretation of what I</p> <p>21 understood from her deposition, as well as looking at</p> <p>22 the forms.</p> <p>23 Q Are you familiar with the regulation that</p> <p>24 requires single prescriptions for individual patients?</p> <p>25 MR. KIRBY: Objection. Where is it -- what are</p>	<p style="text-align: right;">Page 81</p> <p>1 it. I'm not sure if it is a regulation, or guideline,</p> <p>2 or policy. In any case, we have done the same thing and</p> <p>3 the majority of physicians I know of who have ordered</p> <p>4 from NECC, uses the same format. In the beginning, we</p> <p>5 didn't even give patient's names, and later on, they</p> <p>6 asked us to give us the names of the patients we will be</p> <p>7 using, so we will just routinely send the schedules and</p> <p>8 or we send the names of the patients. We -- of course,</p> <p>9 we send only the patients where they will be receiving</p> <p>10 the epidural injections, or that will be receiving the</p> <p>11 steroids.</p> <p>12 Q Can you go to page -- I mean Exhibit number</p> <p>13 13? It's a few pages in, Exhibit 13. It's a</p> <p>14 prescription order form.</p> <p>15 MR. KIRBY: We're working on it. Hold on one</p> <p>16 second. He has it in front of him if you -- just so</p> <p>17 you know.</p> <p>18 BY MR. MILLER:</p> <p>19 Q Okay. So in the first column where it says</p> <p>20 "Name of patient," and it says "see attachment of</p> <p>21 patient names." Do you see that?</p> <p>22 A Yes.</p> <p>23 Q The next one says "One patient five vials." Do</p> <p>24 you see that?</p> <p>25 A Yes.</p>

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<p>1 way to anybody or any agency?</p> <p>2 A No, sir. No, I have not.</p> <p>3 Q I want to ask you to turn to page 11 of your report.</p> <p>5 MR. KIRBY: Page 11.</p> <p>6 A Yes, sir. I'm there.</p> <p>7 Q And under sub-part 3, the last sentence reads, "All of these factors support the conclusion that it was reasonable and appropriate for STOPNC to purchase compounded MPA, which is a reasonable equivalent to Depo-Medrol." What is STOPNC?</p> <p>12 A I think it is the facility name in Tennessee. I think it is St. Thomas Outpatient Neuro-surgery Center, if I'm not wrong.</p> <p>15 Q And what does STOPNC have to do with anything, with Dr. Bhambhani's practice or Box Hill Pain Center?</p> <p>17 A Oh, they were the first ones involved in this issue, and they had many of the documents. Their names were mentioned everywhere in the documents I was reading. I think I even reviewed some of the depositions taken by them.</p> <p>22 Q Are you expressing any opinion about SSTOPNC in these cases?</p> <p>24 MR. KIRBY: I think he said he just had STOPNC on the brain after reviewing those cases, that other</p>	<p>1 or actually preservative-free MPA because of a concern 2 for potential adverse events. My first question is do 3 you know -- does -- are there any preservatives -- 4 excuse me -- were there any preservatives in NECC's 5 compounded steroid?</p> <p>6 A Yes, I think they have polyethylene glycol. I 7 don't know what else they have. They just don't have 8 the alcohol in it.</p> <p>9 Q Okay. And does polyethylene glycol cause or 10 pose any risks to patients?</p> <p>11 A If you exceed 30 percent of the volume, the 30 percent does. So it can suppress the nerve conduction, 13 but it has not been shown to cause any permanent damage 14 or neural tissue damage.</p> <p>15 Q Okay. And so then, the presence of 16 polyethylene glycol as a preservative means that it's 17 not really preservative-free; is that right?</p> <p>18 MR. KIRBY: Objection to form. Foundation. You 19 can answer.</p> <p>20 A Yeah, that's correct. As you asked the 21 question, I'm just realizing that it is a misnomer to 22 call it "preservative-free." I never thought about 23 that.</p> <p>24 Q And there is data that suggests that 25 polyethylene glycol as preservative can be neurotoxic?</p>
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<p>1 stuff, but if you know different?</p> <p>2 A Well, I have --</p> <p>3 BY MR. ROTH:</p> <p>4 Q But --</p> <p>5 A -- reviewed those, and then that it just says 6 that they also protested them, and the factors -- the 7 people who gave the depositions said that it was 8 reasonable and appropriate for them to purchase 9 compounded MPA.</p> <p>10 Q Okay. But Dr. Bhambhani never relied on 11 anybody from STOPNC in making a decision to purchase 12 from NECC, did she?</p> <p>13 A No, she did not. She relied on her own 14 experience, and also her former colleagues, their 15 experience, one or two people's experience. She was not 16 involved in this. We were just -- we were just making a 17 case about using alternate to Depo-Medrol -- alternate 18 to Depo-Medrol.</p> <p>19 MR. KIRBY: Harry, I think it's just a typo, 20 but I mean, you can ask whatever questions you want, 21 but this is just a typo.</p> <p>22 BY MR. ROTH:</p> <p>23 Q Let me -- let me shift gears for you a little 24 bit -- with you a little bit, Doctor. One of the things 25 you've talked about is that Dr. Bhambhani's used any --</p>	<p>1 A Well, it can suppress the nerve conduction at 2 30 percent level or 40 percent level, one of the higher 3 concentrations. In Depo-Medrol, it was only 33 percent 4 when we -- when you buy from Pfizer or Upjohn, I don't 5 know exact concentration at NECC.</p> <p>6 Q Okay. That would be important to know in 7 terms of a physician's interest in buying something that 8 is preservative-free; wouldn't it?</p> <p>9 MR. KIRBY: Objection.</p> <p>10 Q How much preservative is actually in the drug?</p> <p>11 A She was focusing mostly on alcohol, plus the 12 side-effects she experienced with the other drugs. So 13 polyethylene glycol generally was not considered as a 14 neurotoxic. I understand there is some level to which 15 it does suppress neuro fibers, but there is no 16 significant literature to state that. There is more 17 literature in reference to alcohol, and many people did 18 not blame polyethylene glycol for any arachnoiditis 19 cases.</p> <p>20 Q The reason I'm asking that, and I'm again, I'm 21 trying to frame it in a fair way, there is because in 22 your text, which cites other literature, you have 23 written that there is not really, I'm sorry, more 24 specifically, what you have written is that "Other 25 authors have concluded that despite what has been</p>